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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,905

03/17/2004

Alan Sturt

1-74608

5305

27377

7590

05/02/2006

MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA-FOURTH FLOOR
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TOLEDO, OH 43604

EXAMINER

STERLING, AMY JO

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/802,905	Applicant(s) STURT, ALAN	
	Examiner Amy J. Sterling	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23 and 25-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23 and 25-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the **Final Office Action** for application number 10/802,905 Adjustable Beverage Holder filed on 3/17/04. Claims 23, 25-36 are pending. This **Final Office Action** is in response to applicant's reply dated 3/17/06. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 23 and 25-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 23 recites "a plurality of leaf member supported on said housing for pivoting movement substantially perpendicular relative to a plane defined by a support surface." The original disclosure does not support or disclose this concept adequately.

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In fact, the disclosure seems to teach a pivotal movement that that starts parallel to the plane of the support surface and moves through a series of angles to reside in an open position at an angle which is less than perpendicular to the support surface 22A. T

Claims 23 and 25-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites "a plurality of leaf member supported on said housing for pivoting movement substantially perpendicular relative to a plane defined by a support surface." It is unclear how the movement of the leaf members is a perpendicular movement when movement of the leaf member will change its relative angle to the plane of the support surface.

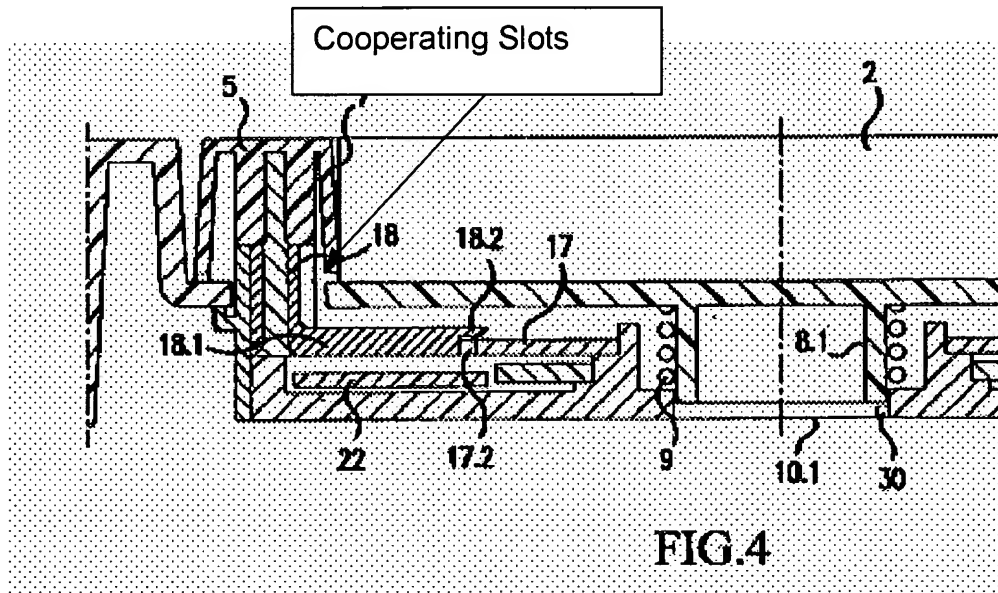
Claim Rejections - 35 USC § 103

Claims 23, 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6843397 to Then et al and in view of United States Patent Publication 2003/0062458 to Leopold et al.

The patent to Then et al. discloses a holder (1) for supporting an article having a housing (3) with an opening (4), the housing having a support surface (8), a plurality of leaf members (5) supported on the housing (3) for pivotal movement relative to the support surface and a ring actuating mechanism (13-17) supported on the housing (3) that is moveable relative to the support surface for causing movement of the plurality of

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leaf members, whereby the plurality of leaf members can be moved to engage an article supported on the support surface. Then et al. also teaches that each of the plurality of leaf members includes a screw flight (18.1) and wherein the actuating mechanism cooperates with each of the screw flights (18.1) to cause movement of the leaf members and wherein the actuating mechanism includes a plurality of slots (See Drawing Below, indicating the open area for each screw flight) that respectively cooperate with each of the screw flights.



Then et al. does not disclose wherein the leaf members pivot on a horizontal axis.

Leopold et al. teaches a cup holder with leaf members (26) which pivot on a horizontal axis, used to support the article in the manner desired. Therefore, it would have been obvious to one of ordinary skill in the art to have used a cup holder with leaf

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members that pivot in the desired manner in order to support an article in the manner desired.

Response to Arguments

The applicant has argued that the Then et al. reference does not teach wherein the arms can rotate or pivot in a plane parallel to the plane of the support surface or bottom. This argument is moot in view of the new grounds of rejection above.

The applicant has also argued that the intra-actuator connection between the wheel and the lever is solely provided by the gear teeth to the gear teeth connection. The applicant is arguing limitations not found in the claims. The applicant has argued that the slots are used for a different purpose. This is unpersuasive in that the slots meet all of the claimed limitations.

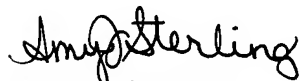
Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal communications only). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

A handwritten signature in cursive script that reads "Amy J. Sterling".

Amy J. Sterling

4/27/06